IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 19 of 1999
Date of decision:19.9.2006

The Commissioner of Income Tax, Ludhiana

...Petitioner

v.

M/s. Mahavir Spinning Mills Limited, Chandigarh Road, Ludhiana.

...Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:

JUDGMENT:

Following questions have been referred by the Income Tax Appelalte Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 28.8.1997 in ITA No.664/Chandi/91, in respect of assessment year 1982-83:-

"1. Whether on the facts and in the circumstances of the case ITAT was right in law in allowing extra shift allowance on transformer, electric sub-station, generator and weighing scales?

2. Whether, on the facts and in the circumstances of the case, the ITAT is right in law in allowing Guest House expenses?"

We have perused the record of the case.

We proceed to answer the questions referred as under:

Question No.1:

The assessee claimed extra shift allowance on transformer, electric sub-station, generator and weighing scale, which has been allowed by the Tribunal by recording a finding that the transformer, electric sub-station, generator and weighing scale were part of plant and machinery and the assessee was entitled to extra shift allowance for the said items.

The issue has been gone into by this Court in **CIT v. Saraswati Industrial Syndicate Limited,** (2002) 257 ITR 779, wherein, it was held that generating set cannot be treated as independent of the whole concern and extra shift allowance has to be allowed taking into account the entire concern as one unit. In ***Commissioner of Income-Tax v. Oswal Woollen Mills Ltd.***(2002) 257 ITR 737, other items have also been held to be entitled to be eligible for extra shift allowance:-

> "...Thus every new machinery installed in a business of manufacture or production of any article or thing qualifies for deduction under section 32A unless it falls in any of the exceptions mentioned therein. A machinery or equipment can be used directly for a manufacturing process, yet for running such a machine, certain accessories may be required. Thus, it would be the entire machinery including the accessories and other equipment which can be said to have been installed for the purpose of business of manufacture of an article or thing. This view finds support from the decision of the Calcutta High Court in *CIT v. Tribeni Tissues Ltd.*[1994] 206 ITR 92, wherein it was held that all machinery and equipment that is necessary to make the assessee's manufacturing unit in the State of operational integration pertain to its manufacturing process, because there could not be any manufacture unless this operational integration was achieved after installation of the plant

> and the plant goes operational. It was further held that any machinery or plant having a link, however minor, in the total process of the operational integration should be taken as machinery or plant pertaining to the manufacturing process. It was, therefore, held that the assessee in that case was entitled to investment allowance on motors, electrical installations, underground cables, overhead cables and air-conditioning equipment. On the same analogy in *Tribeni Tissues Ltd. v. CIT* [1991] 190 ITR 487 (Cal) tube well and weighing machines in a unit manufacturing paper were held to be entitled to investment allowance under section 32A."

In view of the above, this question is answered against the revenue and in favour of the assessee.

Question No.2:

We find that the issue stands covered against the assessee in view of judgment of the Hon'ble Supreme Court in **Britannia Industries Limited v. Commissioner of Income Tax and another,** (2005) 278 ITR 546, wherein it was observed at page 558:-

> ".....In our view, the intention of the Legislature appears to be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purposes of a guest house of the nature indicated in sub-section(4) of section 37. When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodations used for the purposes of business or profession, then it would not have felt the

need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in sub section (5) of section 37 and the provisions of sections 31 and 32 would have been sufficient for the said purpose. The decisions cited by Dr. Pal contemplate situations where specific provision had been made in sections 30 to 36 of the Act and it was felt that what had been specifically provided therein could not be excluded under section 37. The clarification introduced by way of sub-section (5) to section 37 was also not considered in the said case."

Accordingly, this question is answered against the assessee and in favour of the revenue.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

Sept.19, 2006
'gs'

(Rajesh Bindal)
Judge